

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

RSA No.32 of 2023

- 1. Sri Narayan Chakraborty,**
son of late Brajendra Chakraborty,
- 2. Sri Bikash Chakraborty,**
- 3. Sri Nibash Chakraborty,**
- 4. Sri Suman Chakraborty,**

-all are sons of Sri Narayan Chakraborty, all are residents of village-Palatana, P.O. Palatana, P.S. Kakraban, District- Gomati, Tripura, PIN-799105

..... **Appellant (s)**

- Versus -

Smt. Jaygun Bibi,
wife of Shri Kashem Ali,
resident of village-Palatana, P.O. Palatana,
District- Gomati, Tripura, PIN-799105

..... **Respondent (s)**

For the Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Adv. Mr. S. Bhattacharjee, Adv. Ms. P. Shil, Adv.				
For the Respondent(s)	:	Mr. B. Banerjee, Adv. Ms. R. Majumder, Adv.				
Date of hearing	:	12.09.2024				
Date of delivery of Judgment & order	:	17.12.2024				
Whether fit for reporting	:	<table border="1"><thead><tr><th>YES</th><th>NO</th></tr></thead><tbody><tr><td></td><td>√</td></tr></tbody></table>	YES	NO		√
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises out of the judgment dated 17.07.2023 passed by the learned Additional District Judge, Gomati, Tripura, in Title Appeal No.02 of 2019 and related decree thereof by upsetting

the judgment of the learned Civil Judge, Sr. Division, Court No.2, Gomati, Udaipur in Title Suit No.03 of 2017.

[2] The respondent [hereinafter referred to as the plaintiff] instituted the suit bearing Title Suit No.03 of 2017 praying for declaration of her right, title and interest over the suit land and also for recovery of possession. The suit land measure 0.18 acres of CS Plot No.2772 (P) corresponding to RS Plot No.4504/6175 of chara class, of Mouja-Palatana, Udaipur.

[3] Her claim is that the original owner of the suit land was one Fayjan Bibi who sold out the same to her by registered deed of sale No.1-1289 dated 25.04.1987 (Exbt.1) and delivered the possession of the same to her. Her name was accordingly mutated in the related ROR and a separate Khatian was prepared after due field inquiry by the revenue authority. Later on, the plaintiff came to know that the boundary description of her purchased land as reflected in the said sale deed was not proper and therefore, on her request, the transferor executed one registered deed of rectification bearing No.IV-120 dated 07.12.2016 (Exbt.4). The boundary description of suit land tallies with the boundary description as mentioned in deed of rectification. It is the grievance of plaintiff that on 05.09.2013, the appellants [hereinafter referred to as the defendants] illegally dispossessed her therefrom and despite her repeated request, they did not vacate the same in her favour and therefore, the suit was instituted.

[4] The defendants in their pleadings admitted that said Fayjan Bibi was the original owner of the suit land but in the year 1987 vide sale deed no.1-1288 (Exbt.A), she sold out 0.16 acres to one Arjan Ali, with specific boundary by a registered sale deed and handed over the possession of said land to him. Said Arjan Ali in his turn, sold out his said entire purchased land to one Sankar Chakraborty, vide registered sale deed no.1-3112 dated 21.12.1992 (Exbt.B) and handed over the possession to him and till date Sankar Chakraborty is possessing the same but no mutation as yet been done in the name or in the name of his vendor in respect of said land. It is also stated that said original owner of the suit, Fayjan Bibi again sold out 0.10 acres of land to one Milan Chakraborty (wife of defendant no.1) from RS Plot No.4505 by registered deed No.1-1235 dated 29.04.1994 (Ext.C) through her attorney and since then, said Smt. Milan Chakraborty is also possessing her said purchased land.

[5] According to the defendants, the plaintiff actually purchased her land with specific boundary as was reflected in her deed of purchase and she has been possessing the same according to the said boundary description and thereafter, in the year 2016 when some boundary disputes occurred between the said plaintiff on one side and said Milan Chakraborty and said Sankar Chakraborty on other side, said Milan Chakraborty inquired about the same and learnt that in their purchased deeds, wrongly plot number was mentioned as 4505 in place of 4504, though their boundary descriptions were

correct. It is further stated that in the purchased deed of the plaintiff, the plot number was wrongly mentioned as 4504 in place of 4505 but the boundary description was properly reflected but despite the same, the plaintiff in connivance with said Fayjan Bibi got the said deed of rectification executed with an intention to grab the purchase land of Sankar Chakraborty and Milan Chakraborty.

[6] During trial, both parties led their respective evidences and the learned trial court ultimately dismissed the suit. While appreciating the evidences more particularly, the map and the purchased deeds of the plaintiff and said Arjan Ali, the learned trial court observes that the land under purchased deed of the plaintiff [Exbt.1] actually appertains to R.S. Plot No.4505 and not R.S. Plot No.4504 and similarly, the land of Arjan Ali is found to be in R.S. Plot No.4504. The learned trial court also observes that from the admission of the plaintiff that her present homestead land is on the eastern side of the suit land followed by a canal and from the admission of PW-5 that the land of Sankar Chakraborty and Milan Chakraborty and the defendant No.1 are situated on the south-western side of the present homestead land of the plaintiff, fortified the claim of the defendants that both Sankar Chakraborty, Milan Chakraborty and the defendant No.1 were in possession of the land under Plot No.5404 for last 25 years and the land purchased by the plaintiff under Exbt.1 was her present homestead land. The learned trial court also took exception of the fact that the land of the plaintiff

was mutated in her name in the year 1991 whereas the deed of rectification was executed in the year 2016 and therefore, mutation was actually done based on the boundary description of her original deed. The learned trial court further observes that there was mis-description of plot number in the purchased deed of the plaintiff. Learned trial court also held that as both the purchased lands of Sankar Chakraborty and Milan Chakraborty appertain to R.S. Plot No.4504 i.e. the suit plot, they were the necessary party in the suit.

[7] The learned first appellate court however did not accept such reasonings of the learned trial court and set aside the judgment. According to learned first appellate court, said Sankar Chakraborty and Milan Chakraborty were not necessary party as no relief was sought by the plaintiff against them in respect of the suit land. The learned first appellate court also observes that, as per Order VII Rule 3 CPC, the suit land can also be identified by plot number and in the case in hand, the purchased land of the plaintiff was properly mentioned in the related ROR by creating a butted R.S Plot No.4504/6175. However, while granting decree in favour of the plaintiff, the first appellate court passed the decree both in respect of plot number and the boundary description.

[8] Being aggrieved thereby, the present appeal has been preferred by the defendants. The appeal was admitted on the following substantial questions of law:

[i] To treat a party to be necessary party, is any relief required to be claimed against that person by the plaintiff, as observed by learned First Appellate Court?

[ii] When both boundary and plot nos. of suit land are disputed, can a decree be passed without specific findings on correctness of any of the same, by the Court?

[9] During argument, Mr. S. Bhattacharjee, learned counsel appearing for the appellants submits that both said Sankar Chakraborty and Milan Chakraborty were the necessary parties in this suit as their interests are going to be affected by the decree. Mr. Bhattacharjee, learned counsel also submits that the present appellant No.1, Narayan Chakraborty is the elder brother of said Sankar Chakraborty and Milan Chakraborty is his wife and all are residing in the suit land. Mr. Bhattacharjee, learned counsel contends that though the purchased deed of the plaintiff and said Arjan Ali were executed on the same day but prior registration was of the deed of Arjan Ali. According to learned counsel, the boundary descriptions of suit land as given by PWs-1, 2 & 5 in their cross-examination also do not tally with the boundary description of the suit land given in the plaint. Learned counsel with all emphasis submits that the rectification deed was done after 3[three] years of alleged dispossession just to grab the lands of said Sankar Chakraborty and Milan Chakraborty. Learned counsel further points out that PW-5 in his cross-examination admitted that the defendants were living in the suit land for last 25 years and therefore, the question of dispossession of the plaintiff in the year 2016 as alleged does not arise. More so, in her evidence, the

plaintiff did not mention her date of dispossession. Therefore, the story of such dispossession was not proved.

[10] Referring to Section 27 of the Limitation Act, Mr. Bhattacharjee, learned counsel further argues that the date of dispossession must be proved by the plaintiff properly and satisfactorily. Finally, Mr. Bhattacharjee, learned counsel also relies on a decision of the Apex Court rendered in **Subhaga & Ors. vs. Shobha & Ors., 2006 Legal Eagle (SC) 517** and at para 6 of the judgment, it was observed that when generally there are discrepancies between the boundary or any other specific description, boundary should prevail.

[11] Mr. B. Banerjee, learned counsel appearing for the plaintiff contends that the plaintiff purchased the suit land from RS Plot No.4504 whereas the lands purchased by Sankar Chakraborty and Milan Chakraborty were from R.S. Plot No.4505 and as per the map, both the plots were clearly separable and identifiable and therefore, if the boundary description for any reason is ignored, the decree may be passed based on the plot number. Mr. Banerjee, learned counsel also submits that the date of dispossession was clearly mentioned in the examination-in-chief of the plaintiff. Regarding non-joinder of necessary parties, Mr. Banerjee, learned counsel submits that when no relief has been claimed against said Sankar Chakraborty and Milan Chakraborty, there is no necessity to make them party. Learned counsel further argues that at the time of purchase by the plaintiff,

there was no canal in that locality, rather it was made later on, by acquiring the land by the Government. However, such submission does not appear to be very convincing as in the purchased deed of the plaintiff itself, there was specific mention of a canal situated on the eastern side of said purchased land.

[12] Mr. Banerjee, learned counsel also relies on a decision of this court in case of **Biswajit Deb vs. Usha Rani Das [RSA No.28 of 2022]** decided on 30.09.2023 by a Coordinate Bench of this Court wherein reference was made to a decision of the Apex Court to the effect that that the description of the suit property must be sufficient to identify it and it can be identifiable either by boundaries or by survey plot number. Applying said principle, this Court in said case further observed that when there is contradiction in mentioning the plot numbers and the boundary description, the principle that boundary will prevail over the plot number, will not apply. Mr. Banerjee, learned counsel also makes reference of another decision of another coordinate Bench of this Court rendered in **Sadhan Ch. Bal & ors. vs. Swapan Datta & ors. [RSA No.60 of 2005]** decided on 09.04.2014 wherein it was observed that where the suit property can be ascertained either by boundary or by survey plot, there is no bar to decree a suit on the basis of the survey plot.

[13] So far the matter of submission of the learned counsel of the plaintiff that when the boundary is disputed, decree may be passed on the plot number of the suit land, is concerned, this Court

has no difference opinion in the matter of application of said principle, but in that case, it should be ascertained first that description of such plot number is correct and it has correct reflection in the survey map.

[14] On perusal of the purchased deed of the plaintiff dated 25.04.1987 [Exbt.1], it is found that the said original owner, Fayjan Bibi sold out 0.18 acres of land from R.S Plot No.4504 of class-Chara to the plaintiff. On the same day prior to registration of the said deed, the said vendor also sold out 0.16 acres of land, Class-Nal to one Arjan Ali from R.S. Plot No.4505. No dispute has been raised by any of the parties regarding correctness of the description of land purchased by Arjan Ali [Exbt.A]. In the deed of rectification, as executed by the said vendor in favour of the plaintiff on 07.12.2016, the said purchased land of Arjan Ali is shown on the north side of the purchased land of the plaintiff. According to the plaintiff, the boundary description of her purchase land as per recital of the deed of rectification is correct. If it is presumed so, the purchased land of the plaintiff would be on the southern side of the said purchased plot of Arjan Ali but as per the map [Exbt.3], RS plot no.4504 is not situated on the southern side of the R.S. Plot No.4505, rather R.S Plot No.4506 is situated on the southern side. In other words, if the original owner actually transferred the land to the plaintiff from Plot No.4504, land of Plot No.4505 would be on the eastern side of that plot and in that case, name of Arjan Ali would come on eastern side, but, neither in the original deed or in the deed of rectification, name of Arjan Ali has

been shown on the eastern side of purchase land of plaintiff. That apart, as per the mutated khatian of the plaintiff [Exbt.2] her own land has been shown on the northern side of her purchased land whereas as per her deed of rectification, on this northern side, name of Fayjan Bibi [at present Arjan Ali] is mentioned. In the boundary description of her original purchase deed, on the northern side the land of the plaintiff is mentioned but on the eastern side existence of a canal is shown. If the canal is treated to be on the eastern side then the plot number of the purchased land of the plaintiff would be on Plot No.4506 as per the map. Therefore, there are serious contradiction between the plot numbers and the boundary description of the purchased land of the plaintiff both in her original deed and also in her deed of rectification and one cannot be reconciled with the other. Therefore, correctness of description of the plot number in the purchased land of the plaintiff becomes doubtful and hence, it will not be safer to pass any decree based on such survey plot.

[15] Now, coming to the boundary description of the purchased land of the plaintiff, as per said deed of rectification, land of Narayan Chakraborty (Defendant no.1) and his wife Milan Rani Chakraborty are situated on the southern side and also on the western side. As it appears from the purchase deed of Milan Rani Chakraborty (Exbt.C), said Fayjan Bibi, original owner sold out 0.10 acre from plot no.4505 to Smti Milan Rani Chakraborty from the southern portion of that plot no.4505. As per recitals of purchase deed of Arjan Ali (Exbt.A.), said

Faijan Bibi had ownership of total 0.26 acre of land in that plot no.4505 out of which from the northern portion, she transferred 0.16 acre to Arjan Ali who in turn re-transferred the same to Shankar Chakraborty and from the southern portion of that plot, Fayjan Bibi sold out rest 0.10 acre to Smti Milan Rani Chakraborty and therefore, there is no scope for existence of any plot of land in between the land of said Shankar Chakraborty and Milan Rani Chakraborty. It is also not explained by the plaintiff as to how her purchase land, as per the deed of rectification, has been shown to be located in between the land of Arjan Ali and Milan Rani Chakraborty.

[16] The deed of rectification [Exbt.4] was executed by the original owner in favour of the plaintiff after about 29 years of her transfer to the plaintiff. In the contents of said rectification deed, it is further noted that prior to execution of the said deed of rectification, earlier on 14.09.2007, another such deed of rectification was executed by the said vendor in favour of the plaintiff but again they detected error in the said deed and therefore, the said Exbt.4 was executed. There is a long time gap between the execution of the original deed and those deeds of rectification. Initially, when the name of the plaintiff was mutated in the Khatian in the year 1991 after necessary field inquiry, the plaintiff appeared to be satisfied with the boundary description of her purchase deed and did not feel any necessity for such rectification and said Exbt.4 was executed only after her alleged dispossession by the defendants.

[17] For the reasons discussed above, it is also not safe to rely on the boundary description of the purchase land of the plaintiff as reflected in her deed of rectification. The plaintiff has sought for declaration of her right, title and interest in the suit land and as it appears, a cloud has already been created regarding the title of the plaintiff over the suit land, and granting of any such declaratory decree in favour of the plaintiff may go to affect the interests of said Shankar Chakraborty and Milan Rani Chakraborty as according to said deed of rectification, they are the contiguous plot holders. No document has been proved from either side to show that defendant Narayan Chakraborty has any land contiguous to the land of the plaintiff, rather said Shankar Chakraborty and Milan Rani Chakraborty have their respective purchase lands there. But they are not made party in the suit despite specific plea was taken by the defendants in their written statement regarding non-joinder of necessary party for non-impleading those two persons in the suit. Without hearing those two persons, no elaborate scrutiny is permissible regarding their respective purchase deeds and consequently, due adjudication is not possible regarding the title of the plaintiff without they being made party in the suit. In their absence, Court is not in a position to examine the correctness of description of their purchase lands in their respective purchase deed.

[18] To determine who are necessary parties, the Apex Court in **Kasturi vs Uyyamperumal & Ors, (2005) 6 SCC 733**, has evolved the principle of twin test which are as follows:

[i] There must be a right to some relief against such party in respect of the controversies involved in the proceeding.

[ii] No effective decree can be passed in absence of such party.

The relevant paragraph No.7 of the said decision is further quoted below:

"7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."

[19] Nowhere from the pleadings of the parties, it appears that the cloud on the title of the plaintiff over the suit land has been created by any alleged title of the defendant No.1 or his sons who are made parties in the suit as the defendants, but the basic controversy

of the plaintiff in respect of her claim of title over the suit land is against the claim centering round purchase deeds of the wife of the defendant No.1, Milan Rani Chakraborty and his brother, namely Sankar Chakraborty and in such a situation, the plaintiff has/had obviously her right to seek redress against both the said two persons and due to the controversies of title being involved for such execution of different deeds of transfer by the original owner or her transferee, no effective decree can be passed without hearing said Sankar Chakraborty and Milan Rani Chakraborty.

[20] Learned first appellate Court committed error by observing that to be a necessary party the plaintiff must seek relief against the concerned party and as no relief was sought against said Shankar Chakraborty and Milan Rani Chakraborty, they were not necessary party. The twin tests, as laid down by the Apex Court to ascertain as to who are the necessary party, must be applied by the courts to decide the challenges regarding non-joinder of necessary party. Said twin-tests principle nowhere contemplates that to be necessary party in a suit, specific relief has to be sought against him by the plaintiff.

[21] From the above said discussions, it appears that the learned first appellate court has failed to appreciate all the relevant facts and evidences involved in the suit leading to a perverse decision and therefore, the judgment and decree passed by the learned first appellate court are not sustainable in the eye of law.

[22] In the result, the appeal is allowed with cost in favour of the appellants.

The impugned judgment passed by the learned Additional District Judge, Gomati, Tripura on 17.07.2023 in Title Appeal No.02 of 2019 and related decree thereof, are set aside.

Return the trial court's records.

Registry is to prepare the decree accordingly.

Pending application(s), if any, also stands disposed of.

JUDGE

SUJAY GHOSH

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